

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
RESEARCH COMMITTEE
MEETING MINUTES**

November 5, 2015

1. CALL TO ORDER

Chair Laurie Cohen Yoo welcomed everyone and called the meeting of the Research Committee of the California Commission on Disability Access (CCDA or Commission) to order at 1:30 p.m. at the Westfield Corp. 2049 Century Park East, 41st Floor, Los Angeles, CA 90067.

The off-site meeting locations for teleconference were the San Francisco Independent Living Center, 825 Howard Street, San Francisco, CA 94103, and the Department of Rehabilitation, 721 Capitol Mall, Room 242, Sacramento, CA 95814.

Chair Yoo reviewed the meeting protocols.

ROLL CALL

Commissioners Present:

Laurie Cohen Yoo
Chris Downey (via teleconference)
Celia McGuinness (via teleconference)

Commissioners Absent:

Steve Dolim

Staff Present:

Other Commissioners Present:

Guy Leemhuis (via teleconference)

Angela Jemmott, Executive Director
Addison Embrey, Program Analyst
Brandon Estes, Program Analyst
Fajola Jackson, Office Technician

Also Present:

Anthony Goldsmith, Californians for Disability Rights, Inc. (CDR)

Staff Member Jackson called the roll and announced a quorum was not yet present. A quorum was achieved after Commissioner Downey arrived.

Chair Yoo asked to table the approval of the minutes from the last meeting since it was not listed on today's agenda and Commissioners did not receive a copy for review.

2. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

There were no questions or comments from the public.

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3. OUTSTANDING ACTION ITEMS – DISCUSSION

Executive Director Jemmott stated the only outstanding action item will be discussed in today's Agenda Item #4.

4. DSA PUBLIC ACCOMMODATION CASP CERTIFICATIONS – UPDATE

Executive Director Jemmott stated the number of Certified Access Specialists (CASps) registered with the Division of the State Architect (DSA) is 655. This number is deceptively high because it includes CASps that are no longer active.

Executive Director Jemmott reported that CASPs purchase certificates in bulk. Although not a regulatory requirement, the DSA plans to ascertain the number of CASp reports written and the number of certificates issued this year. The DSA will begin their research this week.

Chair Yoo asked staff to determine where the CASps are located jurisdictionally and if they are evenly distributed throughout the state or concentrated in the large counties.

Action Items:

- Staff is to determine where the CASps are located jurisdictionally and if they are evenly distributed throughout the state or concentrated in the large counties.

5. CCDA RESPONSE TO AB 1521 – UPDATE

a. Revised Template (Incoming Case Filing Data Collection)

Chair Yoo stated the template was not addressed in Assembly Bill (AB) 1521, but in another bill that was not signed into law. The CCDA does not have the authority to require the template be used in lieu of submissions of complaints in accordance with AB 1521.

Executive Director Jemmott stated the data submitted to the CCDA is inconsistent. A digital template for filing attorneys to submit online would reduce the paper storage and improve the quality and consistency of the data received.

Commissioner McGuinness agreed that a digital template would improve the consistency and efficiency of data submitted. She stated the template cannot be used in lieu of the complaint. She asked if it would be useful to request that the form be submitted along with the complaint when the majority of submittals will likely not include the form.

Chair Yoo agreed with the difficulty of collecting the data, but stated the concern that the form may contain duplicative information and make more work for staff rather than less.

Commission Chair Leemhuis stated it is important for the Legislative Committee to work on some language for a uniform reporting system that is equally palatable to the business and disability communities, because the issues cannot be understood and resolved by analyzing complaints alone.

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Chair Yoo stated, while the Legislative Committee is working on the language for the uniform tool, the Research Committee can continue to work on the digital form to have it geared up and ready to move quickly when Legislative approval comes through.

Commissioner McGuinness stated, as a member of the Legislative Committee, she felt confident they could create language to clean up the problems with the bill.

Commissioner Downey agreed with cleaning up the language so the bill is not tied to the revenue. He stated it is advantageous for efficiency, with or without additional funding, because to continue as it is will cost more time, energy, and resources to come up with an imperfect and suboptimal reporting system. It is better to spend the time creating the right form to get the information needed.

Executive Director Jemmott stated Disability Rights California provided feedback on the language and format of the first template.

Public Comment:

Anthony Goldsmith, with CDR, spoke in support of the intake form. It will take the pressure off of the CCDA and will be a helpful tool for staff. He suggested the form not be so complex that it becomes overwhelming and burdensome, but detailed enough to pinpoint the failings in the building industry and why issues continue to exist so solutions can be found to directly address those issues.

b. New Template (Case Resolution Report Data Collection)

Executive Director Jemmott stated approximately 166 case resolution reports have been received, but they come in varying formats.

Clarify that Completing the Form is Voluntary

Commissioner McGuinness suggested discussing the feedback received about the CCDA Case Resolution Reporting form posted on the website. She stated the letters contain valid concerns. One of the concerns raised is that the form does not make clear that supplying the information requested is voluntary. She agreed with the suggested language offered in the letter emphasizing that the information being collected is not an obligation but is to assist the CCDA in its data collection efforts.

Chair Yoo agreed but suggested that, to keep the one-page format, the suggested language be condensed to less than a full paragraph. Commission Chair Leemhuis and Commissioner Downey agreed.

Commissioner McGuinness suggested crafting the condensed language outside of today's meeting.

Define "Settlement"

Chair Yoo stated one of the concerns raised in the letters was over the need to define the word "settlement." She agreed with the suggested definition of a settlement – when there is an executed settlement agreement. The Commission can view the definition

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that way but must be careful not to appear to give legal advice to parties submitting the form.

Commissioner McGuinness agreed. She suggested adding that the CCDA does not control what the definition of settlement is and does not make legal pronouncements, but will use the term this way.

Chair Yoo agreed and suggested adding a frequently asked questions section and defining settlement there. She asked staff to make a frequently asked questions page to answer common questions and to include the definition of settlement as discussed in today's meeting.

Commissioner Downey stated individuals may not refer to a frequently asked questions page to get needed clarity. He suggested putting the definition in an appendix that is not part of the form itself in order to keep the simple one-page format.

Chair Yoo agreed with having a separate instructions or guidelines section to put the definition of settlement and other issues that have been brought up in these letters.

Avoid Multiple Resolution Reports on the Same Case

Chair Yoo stated another concern raised in the letters is to avoid multiple resolution reports on the same case. She asked how this is avoided with the submission of complaints, if they are tracked by case number, and if cases that switch from state court to federal court are tracked. Executive Director Jemmott stated staff checks for duplicate and amended cases, but does not track cases that switch courts.

Commissioner Downey asked if there was notification when cases switch courts so they are not double reported. Commissioner McGuinness stated the CCDA is not notified and it is impossible to do automatically. She stated cases that are moved from one court to another are not new cases.

Chair Yoo suggested adding a question on the case resolution reporting form asking for any and all other case numbers that are associated with this case. This will avoid extra forms being submitted, staff will have the information to match up with the intake forms, and during the case, if it changes case number or venue, staff can track it and match it up.

Commission Chair Leemhuis suggested including questions in the voluntary section that relate to the timeline of completion. It would be valuable to learn how swiftly corrections are made, because cases may wait months to be heard in court even though a resolution is reached much earlier.

Appeals

Chair Yoo stated another item of concern in the letters is appeals, which also deals with tracking by case number and relates back to the resolution issue. Under the statute, if a case is dismissed or a judgment is entered, it is required to be reported. An appeal could happen at various points of the case. If there is an appeal after the judgment is

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entered, the reporting has already occurred. If the judgment is overturned on appeal, then to ensure that the data collection information is accurate, submittal of the updated information is necessary from the filing attorney.

Commissioner McGuinness stated this issue needs to balance the imposition on the filing attorney and the need for information. She agreed that, if a case is reversed on appeal and revived, the data will have changed. She suggested handling this issue in the frequently asked questions section and responding to the question "What happens if my case is reversed on appeal?" by encouraging voluntary submittal of a second form to identify what changed.

Chair Yoo agreed and suggested adding a checkbox in the optional resolution form that asks if an appeal is pending or if they are planning to appeal, but that decision may not have been made within five days of the judgment.

Commissioner McGuinness stated the difference between a case on appeal and a situation that is bounced back and forth between state and federal court is, when the case is brought up on appeal and returned, it will have the same case number. It is not a new case number; it is a change in the judgment. It is a data collection issue, rather than a mandatory reporting issue.

Chair Yoo suggested including in the instructions or guidelines section that will be crafted for the case resolution form the encouragement to, in the event of an appeal, submit a subsequent form along with checking the box on the form that indicates this was per an appeal.

Commissioner McGuinness suggested including in the frequently asked questions section a request for attorneys to send a cover letter describing what happened. She recommended not adding a checkbox to the case resolution form since appeals are relatively rare and it may cause confusion.

Remediation of Barriers and Other Favorable Results

Chair Yoo stated the letter correctly points out that whether there were other favorable results is only an item required to be completed by the filing attorney if they have not checked the box related to remediation of construction-related accessibility violations. The form needs to be revised to an if/then direction. Item 12 on the form needs to be a component of the second element of item 11. She suggested an A and B for item 11 – if you answered yes to item B, then go to item 12. Chair Yoo stated the language needed will require time and thoughtfulness. Commissioner McGuinness agreed.

High Frequency Litigant Status

Chair Yoo stated this has already been addressed through the revision of the case resolution form.

Referencing the Federal ADA on the Intake Form

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Executive Director Jemmott stated sometimes Title II cases have Title III construction issues contained in the case.

Chair Yoo stated this information would have value so staff can keep a record internally of why a complaint was or was not included in the data collection.

Commissioner McGuinness suggested adding an asterisk to say, if it is only Title II, they need not fill out the form and submit it. Chair Yoo and Executive Director Jemmott agreed.

Attaching a Copy of the Complaint

Chair Yoo stated one of the questions in the letters asks why the Commission does not ask for a copy of the complaint on the intake form. The reason is that originally it was envisioned that the intake form would be a substitute for the complaints. She suggested examining how the form will be used going forward. If it will not be a substitute for the complaints, a copy of the complaint should be attached to the intake form so the CCDA does not end up with two different forms to match up.

Commissioner McGuinness agreed and stated the problem can be solved in the Legislative Committee.

Injunctive Relief

Chair Yoo stated the next item deals with item 5 on the intake form related to injunctive relief. The issue stated in the letters is that there can be other forms of equitable relief, such as specific performance and declaratory relief. She suggested adding a separate box as a catch-all category for other forms of equitable relief. Commissioner McGuinness agreed.

Litigants not Represented by an Attorney

Chair Yoo stated the next item in the letters points out that individuals who are not represented by an attorney are not required to submit a complaint or to submit the resolution form. She stated there are situations where the plaintiff is an attorney and therefore it gets into a gray area over whether the individual is required to submit the complaint. She suggested keeping the request in the intake form in some way.

Commissioner McGuinness asked Mr. Goldsmith if the concern is that the plaintiffs are thinking they have an obligation.

Public Comment:

Mr. Goldsmith stated he did not know what the concern was. He stated, when an attorney is representing themselves, they are acting as a plaintiff and not as an attorney. He stated he did not imagine that individuals representing themselves would feel they had an obligation in this regard as the laws are currently written.

Changing Address of Property to Address of Other Location

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Chair Yoo stated comment numbers 8 through 10 in the letter have already been incorporated on the revised version of the intake form.

The List

Chair Yoo stated comment numbers 11 and 12 in the letter deal with the list, which is currently being modified to better track what is commonly used and what is found in the building code and most frequently in complaints.

Public Comment:

Mr. Goldsmith highlighted comments in the CDR opinion letter. He emphasized the importance of the questions on the form regarding counting the cases, because the number of cases an individual files or an attorney resolves is the basis upon which they are judged high-frequency litigants. Mr. Goldsmith clarified that the CDR understands that the CCDA cannot come up with its own absolute definition of a settlement that applies at all times, but was trying to communicate in the letter the need to give attorneys leeway and a leash time. He agreed with the idea of a frequently asked questions section. He thanked the CCDA for making a concerted effort to have a thoughtful discussion. It shows the CCDA is doing more than is expected of it.

Action Items:

- Staff is to make a frequently asked questions page to answer common questions.
- The Committee is to determine the preferred definition of a settlement using the suggestion in the opinion letter as a starting point.

6. DATA COLLECTION TOOLS – UPDATE AND DISCUSSION

Phase 1, 2, and 3

Executive Director Jemmott stated the data collection is currently done manually by staff and volunteers. She stated collected paper copies have filled the available storage space. Staff has been looking at various software products to make the documents scannable and retrievable in a digital format, make the forms standardized, and add a public interface with information that is searchable.

7. ADDITIONAL RESEARCH SUPPORT GROUPS? – DISCUSSION

Chair Yoo tabled this agenda item to the next Research Committee meeting.

8. FUTURE AGENDA ITEMS

Chair Yoo asked Commissioners to email staff with any future agenda items.

9. ADJOURN

There being no further business, the meeting was adjourned at 3:00 p.m.